

**HON'BLE SRI JUSTICE A.RAJASHEKER REDDY
AND
HON'BLE Dr.JUSTICE SHAMEEM AKTHER**

**WRIT PETITION Nos.28497, 28509, 28510, 28514,
28515, 28517, 28519, 28521, 28533, 28548 and 28557 of 2019**

COMMON ORDER: (per ARR, J)

As the issue involved in all these writ petitions is one and the same, all these writ petitions are heard together and are being disposed of by this common order. For the purpose of convenience, facts as narrated in W.P.No.28497 of 2019 are referred hereunder.

2. In all these writ petitions, the petitioners are challenging the orders dated 09.12.2009, wherein and whereby, the Tribunal has allowed I.A.Nos.5809 of 2019, 5810 of 2019, 5811 of 2019 and 5812 of 2019 in O.A.No.833 of 2019, which were filed with the following prayers, as has been extracted in the order of the Tribunal :

“I.A.No.5809 of 2019 is an application filed by the Petitioner/Applicant Bank seeking interim direction to the defendants (within such time as may be fixed by this Hon'ble Tribunal) to furnish the security in such sum or otherwise, which will be sufficient to satisfy the Recovery Certificate as the defendants are trying to dispose of their movable and immovable properties of Schedule D & E by creating 3rd party rights etc., in order to frustrate the claim of the Applicant.

I.A.No.5810 of 2019 is an application filed by the Petitioner/Applicant Bank seeking interim injunction restraining the Respondents/Defendants from dealing with disposing of, transferring, alienating, encumbering

or creating any form of 3rd party interest over any of the secured properties described in Application A to C schedules and any of the movable and immovable assets of the defendants described in Application D to E schedules.

I.A.No.5811 of 2019 is an application filed by the Petitioner/Applicant Bank seeking interim order for appointment of Advocate Commissioner/Receiver to take custody/management of all the secured properties in application A to C schedules including power to take possession thereof, if necessary with the help of police and sell the same by public auction and/or private treaty, and to appropriate the proceeds towards the debt amount.

I.A.No.5812 of 2019 is an application filed by the Petitioner/Applicant Bank seeking interim order for appointment of Advocate Commissioner/Receiver to take custody/management of all the movable and immovable assets of the defendants described in application D and E schedule including power to take possession thereof, if necessary with the help of police and sell the same by public auction and/or private treaty, and to appropriate the proceeds towards the debt amount.”

3. Learned counsel for petitioner Mr.Avinash Desai strenuously contends that all these orders passed by the Tribunal are illegal, as the order of attachment and drastic orders of appointing Advocate Commissioner for taking possession of properties and also order restraining the petitioner from alienating the subject properties, are passed without issuing notice to the petitioner. He submits that without proper valuation of properties and also by suppressing the

value of shares, the 2nd respondent-Bank has approached the Tribunal with *malafide* intention and obtained interim orders. The way in which the drastic orders were obtained from the Tribunal for taking possession of properties shows that it is a fit case where this Court should exercise jurisdiction under Article 226 of the Constitution of India. The learned counsel tried to argue the case on merits stating that there is no jurisdiction for the Tribunal to grant such interim orders, that too, *ex parte*. As such, the orders need to be set aside by invoking the powers under Article 226 of the Constitution of India and it is a fit case where this Court should come to the rescue of the petitioner.

4. On the other hand, Sri K.S.Murthy, learned Standing Counsel for the 2nd respondent-Bank could not dispute the fact that the attachment order granted in I.A.No.5809 of 2019 could not be granted without issuing notice to the petitioner. It is also a fact that the interim orders in I.A.Nos.5811 of 2019 and 5812 of 2019 are granted without notice to the petitioner, which are drastic orders to be granted *ex parte*.

5. A reading of the impugned orders would go to show that the order passed in I.A.No.5809 of 2019, directing the petitioner to deposit Rs.6,296.60 Million within 15 days, and in case of failure, directing for attachment of schedule properties, and the orders in I.A.Nos.5811 of 2019 and 5812 of 2019 appointing Advocate Commissioner for straightaway taking possession of schedule

properties, appears to be arbitrary, since those orders are passed *ex parte* without hearing the petitioner. We are not holding that the Tribunal has no power to pass *ex parte* orders, but, in the facts and circumstances of this case, we find that the orders passed in I.A.Nos.5809, 5810, 5811 and 5812 of 2019 in O.A.No.833 of 2019, are arbitrary, and accordingly, those orders are set aside.

6. All the aforesaid I.As. i.e. I.A.Nos.5809, 5810, 5811 and 5812 of 2019 in O.A.No.833 of 2019 are remitted back to the Tribunal for disposal afresh. It is open for the petitioner herein to raise before the Tribunal, all the contentions raised before this Court and the contentions available under law, and the Tribunal shall consider the same and pass reasoned orders within a period of three months from the date of receipt of a copy of this order, as it is stated that counter affidavits are already filed in those I.As.

7. Learned counsel for HDFC Bank submits that they have filed implead petitions in these writ petitions and also in O.A.No.833 of 2019, but as these writ petitions are pending before this Court, the Tribunal is not taking up those implead petitions. Since the matters are remitted to the Tribunal, we are not inclined to decide the implead petitions filed in these writ petitions, and the Tribunal shall consider those implead petitions and decide the same on merits in accordance with law.

8. Learned Standing Counsel for the 2nd respondent-Bank has complained that the petitioner may dispose of the properties, as the order in I.A.No.5810 of 2019 is set aside. As such, the order in I.A.No.5810 of 2019 shall continue to be in force till the said application is decided on merits. In view of the facts and circumstances and over all view of the case, we deem it appropriate to direct the parties to maintain *status quo* as on today in all respects with regard to A to E schedule properties till the disposal of all the I.As. by the Tribunal.

9. The writ petitions are allowed to the extent indicated above. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

A.RAJASHEKER REDDY, J

Dr.SHAMEEM AKTHER, J

Date: 10.03.2021

ajr